



APPROVED

**BOARD OF ADJUSTMENT  
CITY OF SCOTTSDALE  
3939 NORTH DRINKWATER BOULEVARD  
SCOTTSDALE, ARIZONA  
FEBRUARY 7, 2007**

**REGULAR MEETING MINUTES**

**PRESENT:** Jennifer Goralski, Chair  
Patrick Davis, Vice-Chair  
Howard Myers, Board Member  
Terry Kuhstoss, Board Member  
Monica Lindstrom, Board Member

**ABSENT:** Carol Perica, Board Member  
Geoffrey Kerckmar, Board Member

**STAFF PRESENT:** Tim Curtis  
Sherry Scott  
Brad Carr  
Jeff Ruenger  
Louisa Garbo  
Jesus Murillo

**CALL TO ORDER**

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Goralski at 6:05 p.m.

**ROLL CALL**

A formal roll call confirmed the members present as stated above.

**APPROVAL OF MINUTES**

**1. January 7, 2007 Board of Adjustment Study Session Minutes**

**BOARD MEMBER KUHSTOSS MOVED TO APPROVE THE JANUARY 7, 2007 BOARD OF ADJUSTMENT STUDY SESSION MINUTES. SECONDED BY BOARD MEMBER MYERS, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).**

2. **January 7, 2007 Board of Adjustment Regular Minutes**

**BOARD MEMBER KUHSTOSS MOVED TO APPROVE THE JANUARY 7, 2007 BOARD OF ADJUSTMENT MINUTES. SECONDED BY BOARD MEMBER MYERS, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).**

**REGULAR AGENDA**

Chair Goralski offered the Applicants the opportunity to request a continuance due to the absence of two of the Board Members. The Applicants for 14-BA-2006 and 1-BA-2007 indicated they would appreciate a continuance.

3. 14-BA-2006 Martinez Residence  
Requesting a variance from Article V. Section 5.204.G. regarding wall height in a front yard.

**BOARD MEMBER KUHSTOSS MOVED TO CONTINUE 14-BA-2006, MARTINEZ RESIDENCE, TO THE MARCH 7, 2007 MEETING. SECONDED BY BOARD MEMBER MYERS, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).**

6. 1-BA-2007 Sherwood Estates Lot 13  
Requesting a variance to Section 5.404.E.1a regarding front yard setback.

**BOARD MEMBER KUHSTOSS MOVED TO CONTINUE 1-BA-2007 TO THE MARCH 7, 2007 MEETING. SECONDED BY BOARD MEMBER MYERS, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).**

4. 15-BA-2006 Jachimek Residence

Requesting a variance from Article V. Section 5.204.G regarding wall height in a front yard.

Mr. Ruenger explained the request for an increase in wall height to eight feet. He reviewed the four criteria; existing block walls in the right-of-way along Cactus Road would be allowed by the City to be increased to eight feet.

Mr. William Jachimek addressed the Board. He noted the wall height increase was being requested to ensure privacy and to reduce street noise.

Ms. Carolina Butler noted that she had no objection to an eight-foot wall along Cactus. She expressed concern that walls on the east and west sides of the property may set precedents for the neighborhood.

Mr. William Scherer, 11438 North 70th Street, noted his support of an eight-foot wall along Cactus Road and an objection to an eight-foot height being allowed along the other sides of the property.

Mr. Jachimek clarified that he was requesting that the front yard along Cactus be treated as a rear yard, noting no access exists from Cactus Road.

In response to a question by Vice-Chairman Davis, Mr. Curtis confirmed that the Ordinance allowed eight-foot walls along the property lines with the exception of the front yard. The Applicant would be allowed to build an eight-foot wall to the east and west up to the 40-foot setback where it would drop down to three feet. Because the City purchased the land along Cactus the wall would then be allowed to return to eight-feet.

Vice-Chairman Davis opined that the variance met the criteria for approval.

Board Member Kuhstoss opined that the four criteria had been met.

Board Member Myers noted that eight-foot walls would be in place along Cactus in the right-of-way, which would hide the wall on the Jachimek property. He opined that the uniqueness of the property transpired because of the City acquiring the land and allowing walls to be placed in the right-of-way. He noted that he would support the variance.

Board Member Lindstrom agreed that the four criteria had been met.

Chair Goralski concurred that the four criteria were met.

**BOARD MEMBER KUHSTOSS MOVED TO APPROVE A VARIANCE FOR 15-BA-2006. SECONDED BY VICE-CHAIRMAN DAVIS, THE MOTION CARRIED UNANIMOUSLY BY A VOTE OF FIVE (5) TO ZERO (0).**

5. 16-BA-2006 Paradise Valley Ranchos Lot 25

Requesting a variance to Section 5.204.E.2 regarding the side yard setback.

Mr. Wolf was offered the opportunity to request a continuance or to request that Vice-Chairman Davis recuse himself from the matter due to recent oppositional business dealings. Mr. Wolf declined the offer.

Ms. Garbo addressed the Board. Highlights of her presentation included a site plan and photographs of the property. She noted that the request was for an addition constructed without a permit, which encroached into the minimum R1-35 side yard setback. Staff suggested the four criteria were not met because the property was subject to the R1-35 standards and would be subject to the 15-foot setback.

In response to an inquiry by Board Member Lindstrom, Ms. Garbo confirmed that the addition followed the line of the house but as an addition would be required to come into compliance with the 15-foot setback.

Mr. Wolf explained that the house was purchased in 1993. The addition was for a bathroom and walk-in closet off of the master bedroom, which had to be located where the plumbing was accessible. The structure could not be pushed back because of the location of the septic tank.

Mr. Rick Gutierrez explained technical aspects regarding the location of the bathroom. He reviewed the history of the neighborhood and presented photographs depicting the general character of the neighborhood as well as photographs of the addition, which followed the existing building line. He reviewed the original and new floor plans.

Mr. Wolf clarified that the building line followed that of the patio that was original footprint. He noted that the structure could not be pushed inward because of the kitchen window. He stressed that the building line was approximately two feet inward from the roofline and the addition had a flat roof following the building line; the addition was not visible from the front of the house. He noted that the affected neighbor had submitted a letter of support.

Mr. Wolf opined that there were special circumstances because many properties in the subdivision were in violation of the Ordinance and there was no uniformity in the neighborhood.

In response to a question by Board Member Myers, Mr. Wolf reiterated that the extension could not be moved to the west because of the kitchen window and the plumbing difficulties.

Board Member Myers inquired whether the indication that the house met setback requirements when it was built was accurate. Mr. Wolf indicated that he did not know what the regulations were at the time the house was built.

Mr. Wolf suggested another special circumstance existed because when the house was built the owner was deeded 7.5-feet of land from the neighbor to the east; the assumption was that the land was deeded in order to bring the property into compliance with the setback requirements.

In response to a question by Chair Goralski, Ms. Scott explained that City Council recently passed a text amendment addressing legal nonconforming uses in residential districts. Relying on memory she stated that the text amendment allowed building permits for remodel or extension of a portion of the home. The nonconforming portion of the home would remain legal nonconforming and the new portion was required to meet the current Zoning Ordinance.

In response to a question by Board Member Lindstrom, Mr. Wolf explained that plans for the interior had not been finalized. Board Member Lindstrom suggested bringing the wall into compliance and extending the length to the maximum possible without encroaching on the septic system. Mr. Wolf argued that the long, narrow dimensions would not be a useful solution.

In response to a question by Board Member Myers, Mr. Wolf confirmed that the distance between the wall and the kitchen window was approximately 34 inches.

Ms. Garbo explained that the building setback requirement for a covered patio would be 15 feet, which is the same as for a principal structure. Requirements for an accessory building would be two feet.

In response to a question by Chair Goralski, Mr. Wolf explained that the original plan was to tear down the house and rebuild, which is the reason the addition was done without a permit. When the decision was not to demolish the house, a builder was hired to complete the addition; Mr. Wolf took full responsibility for not acquiring a building permit.

Board Member Kuhstoss opined that the addition would be beneficial to the property but felt that the four criteria had not been met.

Board Member Myers noted the difficulty of the case due to the unknown history of the lot. He suggested that alternatives were available that would meet the Ordinance. He noted that he would not support the variance.

Board Member Lindstrom noted that the Statute, section 1.1304 specifically stated that where enlargement, extension, reconstruction, or structural alteration of a nonconforming structure is done the current setbacks must be met. For that reason she stated that she would not support the request.

Vice-Chairman Davis felt that special circumstances had been met because the placement of the house made expansion in an economical fashion burdensome to the owner. He noted that the footprint was the same, which would constitute an improvement to the existing structure. Special circumstances existed were found in the size, location, and the non-uniformity of the neighborhood. He noted his support for the variance.

Chair Goralski agreed with the viewpoints of Vice-Chairman Davis. She opined that the way the house was built severely impacted the ability to expand. She noted her support for the variance.

**BOARD MEMBER KUHSTOSS MOVED TO DENY 16-BA-2006. SECONDED BY BOARD MEMBER MYERS, THE MOTION CARRIED BY A VOTE OF THREE (3) TO TWO (2). CHAIR GORALSKI AND VICE-CHAIR DAVIS DISSENTED.**

Board Member Myers requested a discussion of Ordinance changes, which might be beneficial for cases coming before the Board of Adjustment. Staff noted that the item would be placed on the next study session agenda for discussion and on the regular session agenda for possible action.

## **ADJOURNMENT**

With no further business to discuss, the meeting adjourned at 7:32 p.m.

Respectfully submitted,  
A-V Tronics, Inc.